

CRIMINAL APPEAL NO. 224 OF 1988.

Date of decision: 7.2.1996.

For approval and signature

The Honourable Mr. Justice R. R. Jain

and

The Honourable Mr. Justice H. R. Shelat

Mr. A.H. Mehta, advocate for the appellants.

Mr. K.P. Raval, A.P.P. for respondent-State.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: R.R.Jain & H.R. Shelat, JJ.

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February 7, 1996.

Oral judgment (Per Jain, J.)

Appellants/original accused Nos.1 & 2 in Sessions Case No.190 of 1987 having been convicted for offence punishable under Section 20 (b) (ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "NDPS Act") and under Section 66 (1)(b) of the Bombay Prohibition Act (hereinafter referred to as "the Act"), have preferred this appeal.

According to the prosecution, the Police Inspector, Gomtipur Police Station, received information from his police constable, Dilipsing Jagatsing, that appellants are dealing in contraband drugs and are keeping at their residence. Immediately, the officer called two panchas, went to the residence of the appellants and carried out search. During the course of search of first floor, a lump like contraband drugs was found from the bottom portion of a cupboard. The same was seized and further proceedings were taken. After completing investigation, the appellants/accused were put to trial and came to be convicted.

Apart from the merits of this case, Mr. A.H. Mehta, learned advocate for the appellants, has contended that provisions of Section 42 of the NDPS Act which have been held to be mandatory, have been grossly violated and, therefore, the whole trial is vitiated as a result of which the appellants deserve to be acquitted. Relying upon the landmark judgment of the Apex Court in the case of State of Punjab v. Balbir Singh, reported in (1994) 3 SCC, 299, Mr. Mehta has submitted that whenever any information in connection with commission of the offence under the NDPS Act is received by an officer empowered, is duty bound to reduce it in writing, forward a copy thereof to his immediate official superior. The Supreme Court has clearly held in Balbir Singh's case (supra) that such empowered officer has to take down any information in writing and then forward a copy thereof to his superior officer without delay and if this is not done then is acting in gross violation of the provisions ultimately vitiating trial. In support of his contention, Mr. Mehta has taken us through the evidence of P.W.6, Ex.25. P.W.6, the Investigating Officer at the relevant time, was Inspector of Gomtipur Police Station, who received information from one constable, Dilipsing Jagatsing. On the information from Dilipsing Jagatsing, the witness, P.W.6, proceeded for search of the premises where the contraband drugs were alleged to have been kept. In para 1 of his examination-in-chief, the witness does not say anything about recording of information as contemplated under Section 42 (2) of the NDPS Act. In his cross-examination when asked a pertinent question about recording of information has admitted that in no form the information was reduced in writing. If information was not reduced in writing, question of compliance of later part of sub-section (2) of Section 42 of NDPS Act does not arise, that is, sending a copy thereof to his immediate superior and thereby the later part of sub-section (2) of Section 42 of the NDPS Act

also shall be deemed to have been violated alongwith earlier part. With this legal infirmity we are unable to sustain the conviction passed by the learned trial Judge as is in violation of mandatory provisions as held by the Supreme Court in Balbir Singh's case (supra). Therefore, the appeal deserves to be allowed to that extent and the conviction deserves to be set aside.

Mr. Raval, learned A.P.P., has also invited our attention to operative part of the judgment which speaks of conviction of both the accused/appellant for the offence under Section 66 (1)(b) of the Act. Violation of mandatory provisions while conducting investigation under NDPS Act is no more a ground available in any of the proceedings under the Bombay Prohibition Act and, therefore, to that extent cannot be vitiated. Mr. A.H. Mehta, learned advocate for the appellants, has been fair enough to concede that he has nothing to say about conviction under Section 66 (1)(b) of the Act. Mr. Raval, learned APP, has also taken us through the evidence and we also do not find anything to disturb this part of the order convicting the accused/appellants under Section 66 (1)(b) of the Act and, therefore, conviction and sentence for the offence under Section 66 (1)(b) of the Act is upheld.

Consequently, appeal is partly allowed. Conviction and sentence passed for the offence punishable under Section 20 (b) (ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985 is quashed and set aside and the appellants are acquitted thereof. But, we maintain conviction and sentence passed under Section 66 (1)(b) of the Bombay Prohibition Act. The appellants are in jail since more than eight years and since sentence awarded for offence under Section 66 (1)(b) of the Bombay Prohibition Act is for six months rigorous imprisonment, the same shall be deemed to have been undergone by now. Therefore, appellants are ordered to be set free forthwith, if not required in connection with any other case. We are informed that appellant No.2 is on bail as on today. Therefore, the bail bonds stand shall stand cancelled.